

**Stafford County  
BOARD OF ZONING APPEALS**

**MINUTES April 24, 2007**

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The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, April 24, 2007 was called to order with the determination of a quorum at 7:00 p.m. by Chairman Cecelia Kirkman in the ABC Conference Room in the Stafford County Government Center. Ms. Kirkman introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. She asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Ms. Kirkman said the By-Laws of this Board state that the applicant is allowed up to ten minutes to state their case, the other speakers are allowed up to three minutes to testify, and the applicant is allowed up to three minutes for rebuttal.

**Members Present:** Cecelia Kirkman, Julie Rutledge, Angelo Amador, Ernest Ackermann, John Overbey, and Steven Beauch

**Members Absent:** Larry Ingalls

**Staff Present:** Rachel Hudson, Acting Zoning Administrator  
Melody Friberg, Senior Zoning Technician  
Wanda Doherty, Recording Secretary

**Declarations of Disqualification's:** None

**PUBLIC HEARINGS:**

Ms. Friberg reviewed the following case for the Board.

**SE07-3/2700150 - FRANCES R. & PRESTON NEUHARD** - Requests a Special Exception per Stafford County Code, Section 28-273, "Nonconforming Structures or Residential Buildings", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 21B-2539. The property is zoned R-1, Suburban Residential, located at 306 Cutter Cove, Aquia Harbor Subdivision.

Mrs. Frances Neuhard said they had downsized to the current home and they are requesting a Special Exception to add an addition to the front of their home. The addition would be 11' x 16' and would improve street appearance and their home. Ms. Neuhard thanked the Board and staff for their efforts regarding their request.

Ms. Rutledge asked where the addition would be located.

Mrs. Neuhard showed the Board by using a drawing the location of the addition and explained the details of the addition.

**Proponents:** None

**Opponents:** None

Ms. Kirkman gave the applicant a final opportunity to speak.

Ms. Kirkman closed the public hearing.

**Motion:**

Mr. Beauch made the motion to approve.

Mr. Amador seconded.

Mr. Beauch said he made the motion because they obviously have a problem with the house situated the way it is. He said they are not encroaching on the perimeter of the setback and the request meets all the requirements.

Mr. Amador said he seconded the motion for all the reasons stated and they meet all the requirements for a Special Exception.

**Vote:**

Motion to approve 6-0

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Amador – yes

Mr. Ackermann – yes

Mr. Overbey - yes

Mr. Beauch -yes

Ms. Friberg reviewed the following case for the Board.

**SE07-5/2700154 - FRANK LACEY** - Requests a Special Exception per Stafford County Code, 28-38(j), "Performance Regulations, Exceptions to Open Space Ratio", to allow a reduction of the open space requirements for a proposed Place of Worship on Assessor's Parcel 21M-1. This

property is zoned A-1, Agricultural, located at 215 Doc Stone Road, Smith Lake Overlook Subdivision.

Mr. Frank Lacey said he is representing Touch Heart Christian Church requesting Special Exception for reduction of open space. He said the open space is 80% and we show 62% on our plans.

Mr. Beauch asked how many members the church has.

Mr. Lacey said they started at 10 and presently have 50-55 members.

Ms. Rutledge said on the plans it shows a proposed two story structure is there a structure there now.

Mr. Lacey said no.

Ms. Rutledge said have you looked at other changes to the building site to obtain the 80% and/or have you tried to obtain additional land.

Mr. Lacey said Mr. Kelly Brown with Bowman Consulting could answer the technical questions.

Mr. Brown with Bowman Consulting said they prepared the plan. He said they explored reducing the size of the parking area based on the building size but there are parking requirements. He said the property is steep in the back and they made the site as small as they could before they came to ask for the Special Exception.

Ms. Rutledge said would it make a difference to eliminate the two future additions.

Mr. Brown said no, they could not put parking up that close.

Ms. Rutledge said you have a steep drop-off in the back.

Mr. Brown said when you pull up the structure will actually appear to be a one-story church, but it goes down behind it. He said they have to have room to grade down along the side of the church. He said it is currently a wooded site and they showed the buffer areas and represented it as being planted but most of it already exists. He said there would be plenty of buffer area between the church and the adjacent properties.

Ms. Rutledge asked if they planned to strip the trees.

Mr. Brown said they could not promise some would not be taken down but they would keep as many as possible and it is a real wooded site.

Ms. Kirkman said the open space ratio that you calculated did it include the future additions and the maximum height is not specified on the plans.

Ms. Brown said the height on the back of the building would be 28-30 feet.

Ms. Kirkman asked how many paved parking spaces would there be.

Mr. Brown said 94-95.

Ms. Kirkman said if the congregation is only 50-55 members why would you need 94 parking spaces.

Mr. Brown said the parking spaces are based on the seats in the sanctuary.

Ms. Kirkman said help her understand why the building needs to be so large for a congregation of 55.

Mr. Lacey said he was just counting adults not the children.

Ms. Rutledge said you have to allow for growth.

Mr. Lacey said when he talked to the banks they told him to refer to adults and not include the number of children.

Ms. Kirkman asked for the square footage of the proposed building.

Mr. Lacey said about 6,500 x 100 square feet not including the future expansion.

Ms. Rutledge asked if they planned to have more seats in the future addition.

Mr. Lacey said yes.

Mr. Brown said the sanctuary would not be expanded it would be classrooms.

Ms. Kirkman asked how many seats would be in the sanctuary.

Mr. Lacey said 260.

Ms. Kirkman said she had a hard time understanding why you have 260 seats for an adult congregation of 55.

Mr. Lacey said he did not include the children, teenagers and younger ones in the 55-member

count. He said if you include the children, it would be about 130-140.

Ms. Kirkman said that number is still lower than the 260 stated in the application information.

Mr. Lacey said the 260 number includes growth. He said he was told by other churches to always plan for future growth.

Mr. Ackermann asked if they had looked at purchasing other property or a different size lot.

Mr. Lacey said they could not afford it. He said when they first purchased the property he came to the County, gave them his mission and what he wanted to do and that was 1999. He said at that time he was told it would not be a problem. He said it has been awhile but with those ten members increasing to 55 they have paid off their property. He said they wanted to keep the cost down.

Mr. Overbey said it looks like there are some empty lots next to you. He said have any attempts to purchase those properties been done so you would not have to have a Special Exception.

Mr. Lacey said they did not look in to that.

Ms. Kirkman said your property is adjacent to a reservoir, which supplies drinking water for the County. She said she did not see anywhere in the materials a Stormwater Management pond and she has some concerns about the runoff, particularly given the steep slopes that lead directly into the drinking water.

Mr. Brown said we did not show Stormwater Management on here. He said they envision having to do water control for the runoff, which would be bio-filtration in the parking lot areas. He said Stormwater Management as far as the increase in runoff goes, since it is right on the reservoir we do not believe they would make us provide a retention pond. He said they would want us to address water quality. He said at this point we did not think we needed to show a design.

Ms. Kirkman said her concern was how it will be addressed. She said since this is right next to the reservoir and anything that runs off will go right into the reservoir. She said creating impervious service area, increases run off and you are asking to increase impervious area and how is that going to be addressed.

Mr. Brown said it would be addressed by bio-retention facilities in the parking lot islands, a strip at the back of the parking lot so we make sure we capture all the first run off from the parking lot into those kinds of facilities. He said the County would require that we do that.

Ms. Kirkman said you have not shown that and in addition to that, since low impact development

is only designed to capture the first flush and not designed to capture anything above and beyond that. She said that was her concern and anything not captured by the first flush will go right into the drinking water.

Mr. Brown said he believes the County would make us capture the first flush.

Ms. Kirkman said actually our laws do not require it.

Mr. Brown said they require that I provide water quality at the rate of a half inch per square foot of impervious area for my whole site.

Ms. Kirkman asked if he shows that.

Mr. Brown said no, he did not.

**Proponents:** None

**Opponents:** None

Ms. Kirkman gave the applicant a final opportunity to speak.

Mr. Lacey apologized to the Board for his lack of technical knowledge.

Ms. Rutledge asked if he would be willing to explore purchasing additional property to meet the County, 80% open space ratio. She said would you consider approaching the adjacent property owners to ask them if they would give you enough area so you could have the 80% open space. She said that is one of the questions we ask and the applicant will go and ask and if they still cannot purchase the land they come back to us and that is part of our determination.

Mr. Lacey said he would do whatever the Board wants him to do.

Ms. Rutledge said would you be willing to address the run off issues and provide us with a little bit more information such as square footage, acreage amounts, water quality issues and that would help us make a decision.

Mr. Lacey said he would do all those things and request the Board postpone this hearing.

Ms. Kirkman said the applicant has requested to postpone a decision until he can obtain further information about possibly purchasing additional vacant land adjacent to the property in order to meet the open space ratio, and get additional information on Stormwater Management.

Ms. Friberg reviewed the following case for the Board.

**V07-1/2700187 - RICHARD BOBBITTE** - Requests a Variance from Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards, A-1, Agricultural", side yard requirement, for an existing single family dwelling on Assessor's Parcel 25-18B. The property is zoned A-1,

Agricultural, located at 36 Storck Road.

Mr. Ackerman asked if the property had been visited when the stop work order was issued.

Ms. Friberg said as far as Zoning is concerned we do not make inspections. She said we rely on the engineers or surveyors to provide us with that information. She said we rely on the plat and Stafford County does not require a wall check at the time the walls are poured.

Mr. Bobbitte said he has had a heck of a time getting his house built. He said he signed the contract for his new home in 2004 and it was just completed in the last couple of months. The latest survey that you have is the final survey requested by the bank along with some other paperwork for the final draw and we had to have an Occupancy Permit. He said somewhere down the line someone forgot to measure the exact location of the house when they put the foundation in and assumed it was far enough off the property line. He said he is not a surveyor and had no idea the house was being constructed in the wrong place. He said this has been a financial strain, the real estate has gone soft, and we are having a hard time selling the home we are living in. He said the neighbors the Merryman's have a 200 foot wooded buffer and it does not bother them that the house is close to the property line. He said he is asking the Board for compassion and grant his request.

Mr. Beauch said how and when did you learned the house was in violation.

Mr. Bobbitte said when a representative of Jim Walters Homes called him and said Rick we have a problem. He said that was February 2007 and he was sent a copy of the final survey.

Mr. Beauch said did Jim Walter Homes have the survey done.

Mr. Bobbitte said yes. He said he had a letter from Jim Walter Homes stating they built the house in violation of the code.

Ms. Rutledge asked if the applicant had approached the owner of the land beside him to acquire enough property on that side to meet the requirements.

Mr. Bobbitte said he did mention that and they said hopefully it would not come to that. He said the reason he is asking for the Variance instead of trying to purchase the additional land because that is what Jim Walter Homes asked him to do because it is the cheapest route.

Ms. Rutledge said it is very difficult to meet the requirements and receive a Variance. She said

the hardship cannot be self inflicted and cannot be something the builder has done or monetary hardship. She said if you can get a boundary line adjustment and get, enough footage on that side, you will incur some expenses to do that but there is a long list of requirements to meet for a Variance.

Mr. Amador said it is obviously the builder's error and you probably have a cause of action against the builder.

Ms. Rutledge said if it is possible to acquire the additional land that is the first question we ask and if the answer is no than it is something we consider. She said the Variance stays with the land forever and not just the amount of time you own the land and that is why it is so hard to get.

Mr. Beauch said there are two things to do which is to try to buy a six-foot strip of land or a property line adjustment.

Ms. Kirkman asked if there was a building on the property previously.

Mr. Bobbitte said a mobile home was on the home previously.

Ms. Kirkman said that building met the requirements.

Mr. Bobbitte said yes it did.

Ms. Kirkman asked if the permit was in the builder's name.

Mr. Bobbitte said the permit is in his name.

Ms. Kirkman said when you discussed the different options with the builder, what have you discussed. She said you are coming to us with an issue that is really between you and the builder. She said the builder has clearly owned up to responsibility for this.

Mr. Bobbitte said like anyone would do they are going the cheapest route possible and said let us spend the \$300 for the Variance hearing, try that and see what happens. He said they have instructed the Fredericksburg area manager to do whatever it takes to get this issue resolved. He said there is the matter of the \$13,000 dollars left on the construction loan, which is owed to Jim Walter Homes once they get this mess straightened out. He said they would not get that money until he gets his Occupancy Permit, so if it is going to cost \$1,000 -\$2,000 to get the land they will have to pay.

Ms. Rutledge said one of the options you have is to table or postpone this request this evening. She said you can go back for additional information and the case is open, you have not lost any money on the application, you can come back or drop the application.



Mr. Bobbitte said he requests a postponement to give him time to explore the other options.

Mr. Amador said go back to the builder and let him know you received a pretty strong message that this request would not go your way and look at other options.

Ms. Kirkman said at least one member of the BZA feels it is not the role of the BZA to resolve the mistake a builder has made.

### UNFINISHED BUSINESS

Mr. Ackerman asked if staff had a chance to check on the change for Special Exceptions.

Ms. Hudson said she checked but found nothing new in State code but the By-Laws address it.

Mr. Ackerman said he would contact Mike Chandler for a reference on it.

### REPORT BY DEPUTY ZONING ADMINISTRATOR

Ms. Hudson said the proposed ordinance to amend Section 28-35, Table 3.1, "District Uses and Standards, Flood Hazard District" and Section 28-57, "Flood Hazard Overlay District", went to public hearing of the Planning Commission April 4, 2007 and the Planning Commission recommended denial. She said the issue would go to the Board of Supervisors May 1, 2007.

Ms. Hudson continued her report by discussing cases not yet resolved since 2006, Resolution R07-170 referring an amendment to the zoning ordinance, and clarification of Article 5-2 of the Board of Zoning Appeals By-Laws.

Ms. Hudson asked the Board to select a few dates for CBLAD to come and give a presentation and the Board decided to have an hour workshop before any scheduled BZA meeting.

### ADOPTION OF MINUTES

March 25, 2007

### **Motion:**

Ms. Rutledge made the motion to approve with the edits.

Mr. Overbey seconded.

### **Vote:**

Motion to approve 6-0

Ms. Rutledge – yes  
Ms. Kirkman – yes  
Mr. Amador – yes  
Mr. Ackermann – yes  
Mr. Beauch – yes  
Mr. Overbey - yes

ADJOURNMENT

8:14 p.m.

**Motion:**

Mr. Overbey made the motion to adjourn.

Mr. Ackerman seconded.

**Vote:**

Motion to approve 6-0

Ms. Rutledge – yes  
Ms. Kirkman – yes  
Mr. Amador – yes  
Mr. Ackermann – yes  
Mr. Beauch – yes  
Mr. Overbey - yes

WLD

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Rachel T. Hudson, Acting Zoning Administrator